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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Joint written statement submitted by Lutheran World Federation and Caritas Internationalis, non-governmental organizations in special consultative status, and World Christian Life Community, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 February 1997]

Continuing stalemate in the situation of Bhutanese refugees in Nepal

1. At the fifty-second session of the Commission on Human Rights in 1996, the World Christian Life Community, Lutheran World Federation and Caritas Internationalis drew the attention of the Commission to the situation of the Bhutanese refugees residing in eastern Nepal (E/CN.4/1996/NGO/43). Because of the largely unchanged nature of their circumstances for more than six years since they were forced to flee Bhutan, this submission seeks to highlight the continuing plight of some 91,000 Bhutanese refugees living in camps in Nepal and that of an estimated 30,000 unassisted Bhutanese refugees who live outside these camps in both Nepal and India. These refugees represent more than one sixth of the total population of Bhutan and, therefore, constitute one of the world's largest refugee populations if measured on a relative basis. Their plight deserves greater attention from the international community than has been extended hitherto.

2. Despite a number of important developments in the course of 1996, the situation of these refugees remains essentially unchanged. It may be recalled that:

(a) In April 1996 the seventh round of bilateral negotiations between the Royal Governments of Bhutan and Nepal took place in Kathmandu. No tangible progress towards resolving the situation of the refugees was achieved and no date was set for the next round of negotiations which are to take place in the Bhutanese capital, Thimphu;

(b) From 29 April to 6 May 1996 the United Nations Working Group on Arbitrary Detention conducted a follow-up visit to Bhutan which was preceded by a visit to Nepal, including a short visit to the refugee camps. The Working Group's findings are contained in its reports to the Commission on Human Rights (E/CN.4/1997/4/Add.2 and 3);

(c) Serious concerns have been raised regarding the repeated detention of Bhutanese "appeal marchers" under provisions of the Indian Penal Code upon entry into India en route to Bhutan where they intended to petition the King of Bhutan, and regarding the treatment to which many of them have been subjected by Indian prison authorities culminating in the death in custody of 50-year-old Mr. Babu Ram Shengden on 13 June 1996;

(d) On 27 June 1996 the Permanent Representative of Denmark to the United Nations, Jakob Esper Larsen, in his capacity as Chairperson of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, delivered a brief report to the Executive Committee on the mission to India, Bhutan and Nepal which he undertook from 6 to 27 January 1996;

(e) From 5 to 8 August 1996 UNHCR officials visited Bhutan for the first time to hold discussions with the Royal Government of Bhutan which seemingly did not result in any breakthrough towards a solution;

(f) Bhutanese "appeal marchers" attempting of their own volition to return to Bhutan in the months of August, November and December were immediately apprehended by Royal Bhutanese Police Forces and deported back to India.

3. The situation of the refugees in the camps in eastern Nepal meanwhile has been one of despair and frustration. Most of the refugees wish to return to the place of their former habitual residence in southern Bhutan. The Royal Government of Bhutan, however, appears determined not to allow them re-entry. During last year's session of the Commission on Human Rights, several government delegations expressed optimism regarding the possible outcome of the seventh round of bilateral talks conducted for the first time under the auspices of the foreign ministers of the two countries. With no progress achieved during this last round of bilateral negotiations to date, the continuing stalemate underlines the risk that these refugees may eventually become stateless through the denial by the Royal Government of Bhutan of their fundamental human right to a nationality.

4. Document E/CN.4/1996/NGO/43 provided a detailed background on the origins of this exodus. It may suffice here to recall that the three main ethnic groups of the Kingdom of Bhutan comprise the Ngalongs, the ruling minority, the Sarchops and the ethnic Nepali population. While in the early 1950s, the Royal Government of Bhutan appeared largely sympathetic towards the ethnic Nepali population, subsequent decades saw a distinct change in the Government's attitude culminating in rigorous policies by the late 1980s to integrate them into northern Bhutanese culture under the "One Nation, One People" policy. A new Citizenship Act, promulgated in 1985 and implemented with retroactive effect, provided the foundation for a progressive worsening of the situation and resulted in unprecedented demonstrations in the south of the country in late 1990.

5. Following the demonstrations, widespread human rights violations, deliberately aimed at forcing ethnic Nepalis to leave the country, have been documented by impartial and respected international human rights organizations. Many of the refugees also report having been coerced into signing so-called "voluntary" migration forms. Thousands of ethnic Nepalis consequently fled to neighboring Nepal and India.

International and national legal context

6. The Kingdom of Bhutan has been a signatory since 1973 to the International Convention on the Elimination of All Forms of Racial Discrimination. Despite this declaration of intent it has to date not ratified the Convention. The country has been, moreover, a State party to the Convention on the Elimination of All Forms of Discrimination Against Women and to the Convention on the Rights of the Child since 1981 and 1990 respectively. As a State Member of the United Nations, Bhutan is obliged to adhere to the principles enshrined in the Charter of the United Nations as well as in the Universal Declaration of Human Rights and it is arguably bound by the provisions set forth in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly resolution 47/135 of 18 December 1992.

7. By virtue of the Nationality Law of Bhutan, enacted in 1958, the then King granted Bhutanese citizenship to Nepali settlers living in Bhutan. The granting of citizenship was notified at the time by royal proclamation, but was not accompanied by any specific certification process. The Bhutan Citizenship Act of 1977 amended the Nationality Law and made eligibility

criteria more stringent. The Bhutan Citizenship Act of 1985 was interpreted during a census carried out in 1988 as further tightening the regulations for eligibility by restricting citizenship to ethnic Nepali adults who could certify that they owned land and had lived in Bhutan ever since 1958.

Recent developments

8. The current situation of the refugees is marked by increasing despair among the population that has resulted, amongst other things, in peaceful demonstrations by groups of refugee "appeal marchers" over the past year. Since January 1996, some 1,000 Bhutanese refugees from the camps began walking via India towards Thimphu, the capital of Bhutan, in order to deliver a petition to the King of Bhutan. According to the United States Department of State's annual report on human rights practices for 1996, numerous ethnic Nepali refugees attempting to return to Bhutan were captured by security forces, tortured, and sent back across the border to India.

9. On 14 March 1996 the European Parliament adopted a resolution on the plight of Nepali-speaking refugees from Bhutan, in which it called upon the Royal Governments of Bhutan and Nepal to reach an agreement which would allow the early, voluntary repatriation of the refugees to their country of origin. In this connection, the European Parliament noted that most refugees would appear to qualify under international law as being genuine citizens of Bhutan and that it considered that Bhutan's Citizenship Act of 1985 might need to be modified as a result.

10. The World Christian Life Community, Lutheran World Federation and Caritas Internationalis subsequently drew the attention of the Commission to the situation of the Bhutanese refugees during its fifty-second session. This intervention was followed by a joint oral intervention to the Working Group on Minorities of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its last session held from 30 April to 3 May 1996. A written statement by the same organizations was also submitted to the forty-eighth session of the Sub-Commission for consideration by its distinguished member experts (E/CN.4/Sub.2/1996/NGO/1).

11. During UNHCR's Executive Committee meeting held from 25 to 27 June 1996, its Chairperson delivered a report on his mission to India, Bhutan and Nepal which took place in January 1996. In his report he recommended the appointment of an impartial mediator to facilitate, in cooperation with representatives of the Royal Governments of Bhutan and Nepal as well as UNHCR, a verification process for the Bhutanese refugees in Nepal which should be given priority over continued bilateral negotiations which had achieved little progress in the past. Shortly afterwards, the Royal Government of Bhutan extended an official invitation to UNHCR to visit Bhutan which resulted in a mission from 5 to 8 August 1996 by officials of that organization. To date, however, no report of the visit has been made public by UNHCR. Instead, increasing concern is raised by observers regarding the gradual down-scaling of assistance services to the refugees over the past year and the resulting anxiety caused among the camp population in eastern Nepal.

Recommendations

12. In the light of the continuing impasse in this situation and with a view to contributing to a peaceful and constructive solution to the plight of refugees from Bhutan, the undersigned organizations urge the Commission on Human Rights:

(a) To recommend that the Secretary-General of the United Nations prepare a comprehensive report on the situation of the Bhutanese refugees in Nepal and India for the fifty-fourth session of the Commission on Human Rights;

(b) To request the United Nations High Commissioner for Human Rights, in close cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to examine the reasons for the exodus of the refugees and to mediate among concerned Governments with a view to arriving at an early resolution of the situation and to take all necessary steps, in line with the Convention on the Reduction of Statelessness of 1961, to ensure that the refugees do not become stateless;

(c) To call upon the Royal Government of Bhutan to repeal its 1985 Citizenship Act and to replace it with laws consistent with international human rights law, the letter and spirit of the Charter of the United Nations and the Universal Declaration of Human Rights, and to ratify the International Convention on the Elimination of All Forms of Discrimination without further delay, and to accede to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights;

(d) To request the Secretary-General's Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance to visit Bhutan and submit a report on his findings to the next session of the Commission on Human Rights;

(e) To call upon the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child to consider any violation of the respective conventions with respect to refugee women and children prior to, during and after their flight from Bhutan;

(f) To urge the Royal Governments of Bhutan and Nepal to resume their bilateral talks without delay, if necessary through the mediation of a neutral third party, with a view to finding a speedy solution to the plight of the refugees;

(g) To call upon the Royal Government of Bhutan to recognize UN[illegible] as the expert body mandated by the international community to protect refugees and seek long-term and durable solutions to their plight through, inter alia, determining refugee status, working towards a reduction of the phenomenon of statelessness, and to facilitate and monitor the voluntary return of refugees to their homes in conditions of safety and dignity;

(h) To request UNHCR to take a more pro-active role in identifying durable solutions for this population and, in the interim, to maintain appropriate levels of assistance and protection in the camps in Eastern Nepal.